



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,355	01/05/2001	Robert E. Dvorak	BLFR 1002-1	3933

22470 7590 04/05/2006

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
----------	--------------

3623

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/755,355	Applicant(s) DVORAK ET AL.	
	Examiner Beth Van Doren	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a non-final office action in response to communications received 01/24/2006. In this response, Applicant has elected claims 1-15 and 39-42 with traverse. Therefore, claims 16-38 have been withdrawn and claims 1-15 and 39-42 are pending in the current office action.

Election/Restrictions

2. Applicant's election with traverse of claims 1-15 and 39-42 (Group I) in the reply filed on 01/24/2006 is acknowledged. The traversal is on the grounds that there is no two-way distinctness and there is no serious burden of searching. This is not found persuasive because:

Examiner would first like to point out that on pages 8-9 of the response, Applicant has cited the criteria for restriction between a combination and a subcombination. Examiner points out that the restriction requirement of 10/24/2005 was actually a restriction between subcombinations usable together. Therefore, MPEP § 806.05(d) sets forth the criteria required in the instant restriction.

Therefore, since it can be shown that the two inventions are separately usable and are not obvious variants, the restriction based on subcombinations usable together is proper. Claims 1-15 and 39-42 (Group I) has separate utility such as supplying sales history to a good that lacks a sales history, such as a new good being introduced to market (i.e. cloning data from one good to another). Claims 16-38 (Group II) is separately usable, such as opening a new store and supplying sales data to this new store since it is without a sales history. In Group I, a new product launch is being considered (i.e. only one product and its specific lifecycle), whereas in Group II a store opening is being assessed. With a store opening, sales data composed of many

Art Unit: 3623

products (both new and old, with differing life cycles and interactions) would be considered.

These two concepts contain different implications in the prior art, which causes them to be non-obvious variants and separately usable. See page 20 of applicant's remarks dated 05/26/2005, wherein the applicant compares claim 1 and claim 16. See also MPEP § 806.05(d). The applicant has not provided arguments with facts that show the other use, suggested by the examiner, cannot be accomplished or is not reasonable.

Based on the differing subject matter, the search required for Group I is not required for Group II.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, and 8-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Beyer et al. (U.S. 6,798,249).

As per claim 1, Beyer et al. teaches a computer implemented method of supplying a sales history for a good lacking a sales history, including:

associating sales history data for sales of a cloned good at a plurality of selling locations with an other good (See figures 2 and 4, column 1, lines 30-56, column 2, lines 40-55, column 3,

Art Unit: 3623

lines 37-55, column 4, lines 1-20 and 40-50, column 8, lines 64-67, wherein sales history data for a product that closely resembles another, new product is associated with this new product);

scaling the associated sales history data upward or downward based on anticipated sales of the other good (See figure 5, column 2, lines 50-67, column 4, lines 50-65, column 9, lines 55-65, wherein the sales history data is adjusted to calculated expected sales);

tracking actual sales of the other good for an interval (See column 1, lines 30-56, column 5, lines 25-45, column 9, line 65-column 10, line 30, wherein actual sales and demand are tracked over an interval); and

rescaling the associated sales history data based on actual sales of the other good during the interval (See figure 5, column 5, lines 25-45, column 9, line 65-column 10, line 30, which discloses rescaling the sales history data based on received demand data to adjust the calculated amount).

As per claim 2, Beyer et al. teaches wherein the rescaling takes place after the interval without intervention of a user (See column 3, lines 53-57, column 5, lines 25-45, wherein the forecasting system, including the updating module, operates without human intervention).

As per claims 8 and 9, Beyer et al. discloses scaling the associated sales history data including modifying the associated sales history data (See figures 2 and 4, column 4, lines 10-20 and 35-67, column 5, lines 25-45, wherein the associated sales history is modified when associated with the new product).

As per claims 10, 11, 14, and 15, Beyer et al. discloses wherein scaling and rescaling the associated sales history data includes storing a scaling factor to be applied to the associated sales history data (See column 4, lines 21-34 and 55-67, column 7, lines 30-67, column 8, lines 5-35,

Art Unit: 3623

column 9, lines 20-37, and column 10, lines 20-30, wherein the sales history is scaled and rescaled using factors, such as time, run-rate, and standard deviation).

As per claims 12 and 13, Beyer et al. discloses rescaling the associated sales history data including modifying the associated sales history data (See figure 5, column 5, lines 25-45, column 9, line 65-column 10, line 30, wherein the rescaling modifies data associated with the original sales history to generate an updated sales plan for the new product).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-7, 39, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer et al. (U.S. 6,798,249).

As per claims 6-7, Beyer et al. teaches wherein associating sales history data includes retrieving the sales history data (See column 4, lines 10-20 and 34-41, column 5, lines 40-67, column 6, lines 20-35, wherein the data is extracted). However, Beyer et al. does not expressly disclose that this sales history data is retrieved using a reference or a pointer.

Beyer et al. discloses using historical sales data concerning a product to perform forecasting, where the sales data is retrieved from a database. Examiner takes official notice that it is old and well known in the programming arts that a reference is a small object containing information which refers to data elsewhere, as opposed to containing the data itself. Further,

Art Unit: 3623

Examiner takes official notice that it is old and well known in the programming arts that pointers are a specific type of reference whose values are used to refer to ("point to") another value stored elsewhere in computer memory. Both pointers and references have the known benefits of being able to manipulate references to data without actually having to modify the data itself. Further, pointers and references increase flexibility in where objects can be stored, how they are allocated, and how they are passed between areas of code, making the sharing of data between different code areas easier. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use references and pointers to retrieve the data from the databases in Beyer et al. in order to increase the flexibility of the system based on the known benefits of pointers and references, discussed above.

Claim 39 recites equivalent limitations to claim 1 and therefore is rejected using the same art and rationale as set forth above in the rejection of claim 1. Beyer et al. further discloses comparing the actual sales of the good to the sales history data of the cloned good (See column 5, lines 25-45, column 7, lines 54-67, column 9, line 65-column 10, line 30). Beyer et al. further discloses grouping products into product families with similar historical demand patterns (See column 3, lines 39-56, column 7, lines 54-67, wherein products are grouped into product families). However, Beyer et al. does not expressly disclose comparing the actual sales to the sales history data for a set of candidate goods and evaluating whether the sales history of one or more of the candidate goods better matches said actual sales.

Beyer et al. discloses storing sales history data for goods as associated when the goods are in a product family. Beyer et al. further discloses that this product family shares certain life-cycle characteristics, such as monthly demand profiles. Beyer et al. also discloses grouping a

Art Unit: 3623

new product with a product family before any sales data is known about the product and then comparing the new product with the product family as actual sales data is collected. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to regroup the other, new product with another product family in order to more accurately forecast for items in the future by ensuring that like products are grouped together.

As per claim 42, Beyer et al. discloses wherein the comparing and evaluating take place after the actual sales interval, without intervention of the user (See figure 5 and column 3, lines 53-57, column 5, lines 25-45, column 9, line 65-column 10, line 30, wherein the forecasting system, including the updating module, operates without human intervention).

7. Claims 3, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer et al. (U.S. 6,798,249) in view of Technology Strategy, Inc. (www.grossprofit.com). The following references describe the different features of the service performed by Technology Strategy, Inc.:

- i. Screenshots of www.grossprofit.com, which is Technology Strategy, Inc.'s homepage (referred to herein as references A);
- ii. Article "Merchants Try Complex Math Tools to Improve Inventory Decisions" by Koloszyc from Stores Magazine (referred to herein as reference B);
- iii. Article "Looking Back to Fashion's Future" by Ackerman from The Boston Globe (referred to herein as reference C).

As claim 3, Beyer et al. discloses wherein the rescaling takes place after new data becomes available (See figure 5, column 5, lines 25-45, column 9, line 65-column 10, line 30). Beyer et al. further teaches wherein the rescaling takes place after the interval without intervention of a user (See column 3, lines 53-57, column 5, lines 25-45, wherein the forecasting system, including the updating module, operates without human intervention). However, Beyer et al. does not expressly disclose that the rescaling takes place repeatedly on a predetermined cycle beginning at the end of the interval.

Technology Strategy, Inc. discloses wherein rescaling takes place repeatedly on a predetermined cycle beginning at the end of the interval (See at least reference A, pages 1-2 and 4, reference B, sections 2-6, wherein the plan is rescaled based on predetermined intervals).

Both Technology Strategy, Inc. and Beyer et al. disclose demand forecasting for a product using a profile of historic data. Both the systems are computer-implemented. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the updates of Beyer et al. occur in predetermined cycles, such as the predetermined assessments of Technology Strategy, Inc. in order to increase the speed to action of the system by causing the assessments to occur on a definable, on-going basis. See at least page 5 of Technology Strategy, Inc.

As per claim 40, Beyer et al. discloses tracking actual sales of the other good for an interval (See column 1, lines 30-56, column 5, lines 25-45, column 9, line 65-column 10, line 30, wherein actual sales and demand are tracked over an interval). However, Beyer et al. does not expressly disclose that the actual sales interval includes a plurality of causal periods and evaluating takes place on a causal period by causal period basis.

Art Unit: 3623

Technology Strategy, Inc. disclose that the actual sales interval includes a plurality of causal periods and evaluating takes place on a causal period by causal period basis (See reference A, page 4, specifically section 4, reference B, page 1, section 3, page 2, sections 2-6, and page 3, and reference C, page 2, sections 3 and 4, which discloses sales intervals on which the sales are evaluated).

Both Technology Strategy, Inc. and Beyer et al. disclose computer implemented systems that perform demand forecasting for a product using a profile of historic data, wherein the forecasts are reanalyzed over time intervals. It would have been obvious to one of ordinary skill in the art at the time of the invention to include causal periods within the actual sales interval in order to interval in order to more accurately control inventory volumes and more accurately forecast sales by using a smaller unit of analysis. The system of Technology Strategy, Inc. is capable of operating on any interval selected.

As per claim 41, Beyer et al. discloses tracking actual sales of the other good for an interval and evaluating takes place on this interval basis (See column 1, lines 30-56, column 5, lines 25-45, column 9, line 65-column 10, line 30, wherein actual sales and demand are tracked over an interval). However, Beyer et al. does not expressly disclose that this actual interval is daily or more frequent periods.

Technology Strategy, Inc. discloses wherein the actual sales interval includes weekly or more frequent periods and evaluating takes place on a weekly or more frequent period basis (See at least reference A, page 4, reference B, page 1, section 3, page 2, sections 2-6, and page 3, which discloses evaluating on a weekly basis). However, Technology Strategy, Inc. does not expressly disclose evaluating on a daily basis.

Both Technology Strategy, Inc. and Beyer et al. disclose computer implemented systems that perform demand forecasting for a product using a profile of historic data, wherein the forecasts are reanalyzed and updated over time intervals. Technology Strategy, Inc. discloses rescaling on specific time intervals and further discloses that the software meets the specific needs of the customer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a daily interval as the actual interval for reassessment in order to more accurately control inventory volumes and forecasts by using a smaller unit of analysis. The system of Technology Strategy, Inc. is capable of operating on any interval selected.

8. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer et al. (U.S. 6,798,249) in view of Crosswhite (U.S. 6,611,726).

As per claims 4 and 5, Beyer et al. teaches wherein associating sales history data includes retrieving the sales history data (See column 4, lines 10-20 and 34-41, column 5, lines 40-67, column 6, lines 20-35, wherein the data is extracted). However, Beyer et al. does not expressly disclose that this sales history data is copied.

Crosswhite discloses forecasting using historical data, such as prior product demand, wherein a copy of the located historical data is retrieved (See column 8, lines 27-35 and line 55-column 9, line 25, wherein a copy of the data associated with the forecast is retrieved).

Both Crosswhite and Beyer et al. disclose using historical sales data concerning a product to perform forecasting, where the sales data is retrieved from a database. It would have been obvious to one of ordinary skill in the art at the time of the invention to retrieve a copy of the

Art Unit: 3623

data (instead of the data itself) in order to increase the integrity of the originally stored data by only manipulating a copy of such data, thus increasing the chance that the retrieved data is representative of normal data, containing no data anomalies. See column 9, lines 15-35, which discuss flaws in retrieved data.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lwd
bvd

March 29, 2006

Beth Van Doren
Beth Van Doren
Technology Center 3600